

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA *ex rel.*  
ELLSWORTH ASSOCIATES, LLP,

Plaintiff-Relator,

v.

CVS HEALTH CORPORATION, *et al.*,

Defendants.

Case No.: 2:19-cv-02553-JMY

**DECLARATION OF BRIAN R. STIMSON**

I, Brian R. Stimson, declare as follows:

1. I am a partner at McDermott Will & Emery LLP and counsel for defendants CVS Health Corporation, CVS Pharmacy, Inc., SilverScript Insurance Company, LLC, and CVS Caremark Corporation in this action. I make this declaration based on my own personal knowledge and records and information reasonably available to me in my role as counsel for defendants. I could testify competently thereto if called as a witness.

2. This declaration attaches exhibits from Medicare Plan Finder, an official website of the United States government that enables individuals to “explore [their] Medicare coverage options.” The landing page for Medicare Plan Finder is at the following address: <https://www.medicare.gov/plan-compare/#/?year=2022&lang=en>. Any member of the public can visit the Medicare Plan Finder website and conduct free searches without needing to log in.

3. Medicare Plan Finder generated coverage and cost predictions for each of the three 2022 SilverScript Part D plans—SilverScript Plus, SilverScript Choice, and SilverScript SmartRx—for a hypothetical Part D enrollee in zip code 19106 who fills her prescriptions at the CVS Pharmacy located at 259 Market Street in Philadelphia. By adding a brand drug and its generic equivalent to the hypothetical enrollee’s “drug list,” Medicare Plan Finder produces

information about the coverage status and estimated costs for the brand and its generic equivalent under that plan at the enrollee's pharmacy.

**SilverScript Plus**

4. Attached hereto as **Exhibit 1** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Copaxone (20mg/ml solution prefilled syringe), which is currently covered by this plan, to its generic equivalent glatiramer acetate (20 mg/ml solution prefilled syringe), which is not currently covered by this plan, filled once a month with a box of 30 syringes through the end of 2022.

5. Attached hereto as **Exhibit 2** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Exelon (9.5mg/24hr patch) to its generic equivalent rivastigmine (9.5mt/24hr patch) filled once a month with a box of 30 patches.

6. Attached hereto as **Exhibit 3** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Invega (6mg tablet extended release 24 hour) which is currently covered by this plan, to its generic equivalent paliperidone (6mg tablet extended release 24 hour), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

7. Attached hereto as **Exhibit 4** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Renvela (2.4gm packet), which is currently covered by this plan, to its generic equivalent sevelamer carbonate (2.4gm packet), which is not currently covered by this plan, filled once a month in a quantity of 90 packets.

8. Attached hereto as **Exhibit 5** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Renvela (800mg tablet), which is currently covered by this plan, to its generic equivalent sevelamer carbonate (800mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 180 tablets.

9. Attached hereto as **Exhibit 6** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Harvoni (90-400mg tablet), which is currently covered by this plan, to its generic equivalent ledipasvir/sofosbuvir (90-400mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

10. Attached hereto as **Exhibit 7** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Epclusa (400-100mg tablet), which is currently covered by this plan, to its generic equivalent sofosbuvir/velpatasvir (400-100mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

11. Attached hereto as **Exhibit 8** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Advair (250-50mcg/act aerosol powder), which is currently covered by this plan, to its generic equivalent fluticasone/salmeterol (250-50mcg/act aerosol power), which is not currently covered by this plan, filled once a month for a pack of 60 powders.

12. Attached hereto as **Exhibit 9** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Suboxone (8-2mg film), which is currently covered by this plan, to its generic equivalent buprenorphine/naloxone (8-2mg film), which is not currently covered by this plan, filled once a month.

13. This analysis could not be performed for the remaining drugs the relator alleges in the second amended complaint.

14. For Asacol HD (800mg tablet delayed release), Canasa (1000mg suppositories), Istalol (.5% solution), and Xopenex (45mcg/act aerosol), the 2022 SilverScript Plus Part D plan covers the generic equivalent, not the brand.

15. For Ventolin HFA (108 (90 base) mcg/act aerosol solution), the 2022 SilverScript Plus Part D plan covers both the brand and the generic equivalent.

16. For Voltaren gel, Medicare Plan Finder's search function did not recognize the brand name Voltaren.

#### **SilverScript Choice**

17. Attached hereto as **Exhibit 10** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Copaxone (20mg/ml solution prefilled syringe), which is currently covered by this plan, to its generic equivalent glatiramer acetate (20 mg/ml solution prefilled syringe), which is not currently covered by this plan, filled once a month with a box of 30 syringes through the end of 2022.

18. Attached hereto as **Exhibit 11** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Exelon (9.5mg/24hr patch), which is currently covered by this plan, to its generic equivalent rivastigmine (9.5mt/24hr patch), which is not currently covered by this plan, filled once a month with a box of 30 patches.

19. Attached hereto as **Exhibit 12** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Invega (6mg tablet extended release 24 hour), which is currently covered by this plan, to its generic equivalent paliperidone (6mg tablet extended release 24 hour), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

20. Attached hereto as **Exhibit 13** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Renvela (2.4gm packet), which is currently covered by this plan, to its generic equivalent sevelamer carbonate (2.4gm packet), which is not currently covered by this plan, filled once a month in a quantity of 90 packets.

21. Attached hereto as **Exhibit 14** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Renvela (800mg tablet), which is currently covered by this plan, to its generic equivalent sevelamer carbonate (800mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 180 tablets.

22. Attached hereto as **Exhibit 15** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Epclusa (400-100mg tablet), which is currently covered by this plan, to its generic equivalent sofosbuvir/velpatasvir (400-100mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

23. Attached hereto as **Exhibit 16** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Advair (250-50mcg/act aerosol powder), which is currently covered by this plan, to its generic equivalent fluticasone/salmeterol (250-50mcg/act aerosol power), which is not currently covered by this plan, filled once a month for a pack of 60 powders.

24. Attached hereto as **Exhibit 17** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Suboxone (8-2mg film), which is currently covered by this plan, to its generic equivalent buprenorphine/naloxone (8-2mg film), which is not currently covered by this plan, filled once a month.

25. This analysis could not be performed for the remaining drugs the relator alleges in the second amended complaint.

26. For Harvoni (90-400 mg tablet), the 2022 SilverScript Choice Part D plan does not cover either the brand or the generic equivalent.

27. For Asacol HD (800mg tablet delayed release), Canasa (1000mg suppositories), Istalol (.5% solution), and Xopenex (45mcg/act aerosol), the 2022 SilverScript Choice Part D plan covers the generic equivalent, not the brand.

28. For Ventolin HFA (108 (90 base) mcg/act aerosol solution), the 2022 SilverScript Choice Part D plan covers both the brand and the generic equivalent.

29. For Voltaren gel, Medicare Plan Finder's search function did not recognize the brand name Voltaren.

**SilverScript SmartRx**

30. Attached hereto as **Exhibit 18** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Copaxone (20mg/ml solution prefilled syringe), which is currently covered by this plan, to its generic equivalent glatiramer acetate (20 mg/ml solution prefilled syringe), which is not currently covered by this plan, filled once a month with a box of 30 syringes through the end of 2022.

31. Attached hereto as **Exhibit 19** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Harvoni (90-400mg tablet), which is currently covered by this plan, to its generic equivalent ledipasvir/sofosbuvir (90-400mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

32. Attached hereto as **Exhibit 20** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Epclusa (400-100mg tablet), which is currently covered by this plan, to its generic equivalent sofosbuvir/velpatasvir (400-100mg tablet), which is not currently covered by this plan, filled once a month in a quantity of 30 tablets.

33. Attached hereto as **Exhibit 21** are the results of a Medicare Plan Finder inquiry comparing the enrollee's estimated costs for Advair (250-50mcg/act aerosol powder), which is currently covered by this plan, to its generic equivalent fluticasone/salmeterol (250-50mcg/act aerosol power), which is not currently covered by this plan, filled once a month for a pack of 60 powders.

34. This analysis could not be performed for the remaining drugs the relator alleges in the second amended complaint.

35. For Renvela (2.4gm packet) and Renvela (800mg tablet), the 2022 SilverScript SmartRx Part D plan does not cover either the brand or the generic equivalent.

36. For Asacol HD (800mg tablet delayed release), Canasa (1000mg suppositories), Exelon (9.5mg/24hr patch), Invega (6mg tablet extended release 24 hour), Istalol (.5% solution),

Suboxone (8-2mg film), and Xopenex (45mcg/act aerosol), the 2022 SilverScript SmartRx Part D plan covers the generic equivalent, not the brand.

37. For Ventolin HFA (108 (90 base) mcg/act aerosol solution), the 2022 SilverScript SmartRx Part D plan covers both the brand and the generic equivalent.

38. For Voltaren gel, Medicare Plan Finder's search function did not recognize the brand name Voltaren.

\*\*\*

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 25, 2022  
Washington, DC



---

Brian R. Stimson